IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12609 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MAYUR ALIAS MAVLO BHAVSANG PARMAR

Versus

DISTRICT MAGISTRATE

Appearance:

1. Special Civil Application No. 12609 of 2002

MS DR KACHHAVAH for Petitioner No. 1

MR KAMLESH KACHHAVAH for Petitioner No. 1

MS NANDIJI JOSHI, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE KSHITIJ R.VYAS

Date of decision: 19/05/2003

ORAL JUDGEMENT

The petitioner - detenu, Mayur @ Mavlo Bhavsang

Parmar, in this petition, has challenged the order of detention dated 5.11.2002 passed by the District Magistrate, Bhavnagar, i.e. respondent No.1 herein, under the provisions of the Gujarat Prevention of Anti Social Activities Act, 1985 (in Short, 'PASA Act').

In the grounds of detention of the even date supplied to the petitioner along with the order of detention, the detaining authority has placed reliance on five criminal cases filed by the Umrala Police Station. The first case is filed for the offence under Section 395 of IPC; three cases are filed for the offences under Sections 392 and 114 of IPC whereas the fifth case is filed by the 'B' Division Police Station, Bhavnagar for the offences punishable under Sections 392, 342, 323, 504 and 114 of IPC.

Over and above the aforesaid criminal cases, the detaining authority has also relied upon the incidents alleged to have taken place on 22nd July 2002, 20th July 2002, and 18th July 2002 wherein the petitioner is involved in extorting money, armed with deadly weapons, as can be seen from the statements of three witnesses recorded on 1.10.2002, whose names have not been disclosed claiming privilege under Section 9(2) of the PASA Act. Considering the aforesaid material, the detaining authority has recorded a finding that the petitioner is a 'Dangerous Person' within the meaning of Section 2(c) of the PASA Act and therefore, with a view to preventing him from acting in any manner prejudicial to the maintenance of public order in the areas of Umrala and 'B' Division Police Station of Bhavnagar, the detention of the petitioner is necessary and hence the order of detention has been passed.

Learned Counsel Ms.Kachhavah for the petitioner has challenged the order of detention on many grounds. However, it is not necessary for me to consider all the grounds since the petition is capable of being disposed of on the sole ground of delay in passing the order of detention. Learned Counsel for the petitioner submits that the last offence, i.e. C.R. No.334 of 2002 was registered against the petitioner on 28th August 2002; he was arrested on 30th August 2002; he was granted bail on 7.9.2002 and the order of detention has been passed against him on 5.11.2002, i.e. after more than two months of registration of the last offence. In the submission of the learned Counsel, the detaining authority has not explained the delay in passing the order of detention and therefore, the order of detention is passed mechanically without application of mind. Learned Counsel, therefore,

submits that the order of detention, under the circumstances, vitiates itself. To substantiate her submission, reliance is placed on the decision of the Apex Court rendered in the case of Pradeep Nilkanth Paturkar v. S.Ramamurthi and ors., reported in AIR 1994 SC 656.

I have gone through the affidavit-in-reply filed by Shri K.A.Patel, District Magistrate, Bhavnagar, respondent no.1 herein. In paragraph 12 of the reply, the said respondent has tried to justify his action by stating that :

"12..... I say that in the last offence registered against him he was released on bail on 7-9-2002. Thereafter the sponsoring authority has collected necessary information and submitted a proposal. On receipt of the same, I have made necessary verification of the veracity, genuineness and correctness of the statements of witnesses and the incidents narrated in it by personally calling the said witnesses to my office and after considering all the materials placed before me, facts and circumstances of the case as well as legal provisions applicable to the facts of the case, as I was subjectively satisfied that the detenu is a dangerous person and his anti-social activities have the potential to disturb the public order and therefore it is necessary to detain him immediately with a view to prevent him from acting in any manner prejudicial to the maintenance of public order, I have passed the order of detention against the detenu without any delay on 5.11.2002. Hence there is no delay in passing the order of detention. Therefore the contention raised by the detenu in this para is not tenable at law."

In view of the above, it is clear that the detaining authority has failed to satisfactorily explain the delay which makes a ground of detention not proximate, vitiating the order of detention itself. As held by the Apex Court in the case of Pradeep Nilkanth Paturkar (supra), in case unexplained delay, whether short or long, especially when a specific plea of delay has been raised, I am constrained to quash the detention order.

In the result, the petition is allowed. The impugned order of detention dated 5.11.2002 passed against the detenu is hereby quashed and set aside. The

detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is accordingly made absolute with no order as to costs. Direct service is permitted.

(Kshitij R. Vyas, J.)

Sreeram.